

# SB991

Measure Title:	RELATING TO TELECOMMUNICATIONS.
Report Title:	Telecommunications; Basic Exchange Service Exemptions; Pricing Flexibility; Sale, Lease, Encumbrance of Assets; Financing; Affiliate Transactions; Issuance of Stock; Financial Reports
Description:	<p>Except for requirements under federal law and section 269-7 and 269-16.9, exempts a public utility providing basic exchange service to every county in the State or any affiliate or parent of such public utility from chapter 269 and the jurisdiction of the PUC and consumer advocate. Exempts a public utility providing basic exchange service to every county in the State from financial report requirements. Repeals language requiring approval of the PUC prior to a telecommunications carrier charging a higher rate for basic exchange service than the rate included in the carrier's filed tariff. Allows any public utility providing basic exchange service to every county in the State to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for any purpose, without securing approval of the PUC. Exempts telecommunications carriers from utility rate regulation and ratemaking procedures and provisions relating to valuations, regulatory flexibility for effectively competitive services, cross-subsidies, and access to advanced services. Allows any public utility providing basic exchange service to every county in the State to sell, lease, assign, dispose of, or encumber its property by any means without approval of the PUC, provided that the utility notifies the PUC in writing of such a transaction within 30 days. Exempts any transactions by public utilities providing basic exchange service to every county in the State from provisions regulating relations with an affiliated interest and contracts with affiliates filed and subject to PUC action and issuance of voting stock restrictions.</p>
Companion:	<a href="#">HB272</a>
Package:	None
Current Referral:	CPH
Introducer(s):	WAKAI, ENGLISH, KEITH-AGARAN, S. Chang, Nishihara, Taniguchi

TESTIMONY OF  
JAMES P. GRIFFIN, Ph.D.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 26, 2019  
9:00 a.m.

Chair Baker and Members of the Committee:

**MEASURE:** S.B. No. 991

**TITLE:** RELATING TO TELECOMMUNICATIONS.

**DESCRIPTION:** Except for requirements under federal law and section 269-7 and 269-16.9, exempts a public utility providing basic exchange service to every county in the State or any affiliate or parent of such public utility from chapter 269 and the jurisdiction of the PUC and consumer advocate. Exempts a public utility providing basic exchange service to every county in the State from financial report requirements. Repeals language requiring approval of the PUC prior to a telecommunications carrier charging a higher rate for basic exchange service than the rate included in the carrier's filed tariff. Allows any public utility providing basic exchange service to every county in the State to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for any purpose, without securing approval of the PUC. Exempts telecommunications carriers from utility rate regulation and ratemaking procedures and provisions relating to valuations, regulatory flexibility for effectively competitive services, cross-subsidies, and access to advanced services. Allows any public utility providing basic exchange service to every county in the State to sell, lease, assign, dispose of, or encumber its property by any means without approval of the PUC, provided that the utility notifies the PUC in writing of such a transaction within 30 days. Exempts any transactions by public utilities providing basic exchange service to every county in the State from provisions regulating relations with an affiliated interest and contracts with affiliates filed and subject to PUC action and issuance of voting stock restrictions.

**POSITION:**

The Public Utilities Commission offers the following comments for consideration.

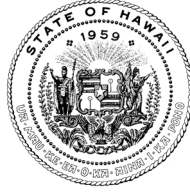
**COMMENTS:**

The Public Utilities Commission (“Commission”) does not oppose streamlining regulation of the telecommunications industry in Hawaii. In the past several decades, as the industry has become more competitive, regulation of businesses offering telecommunications services in Hawaii has been significantly reduced, through both legislative action and Commission orders. The Commission is supportive of policies enabling robust competition in the market while ensuring high quality customer service from telecommunications providers.

However, the Commission observes the proposed bill, as currently drafted, would create uncertainty regarding the obligation of the incumbent telecommunication company to serve as the carrier of last resort for vulnerable customers. In addition, it is unclear whether telecommunications companies would continue to be eligible for substantial federal grants and subsidies absent certain Commission actions. Furthermore, this measure calls into question the applicability and future effect of prior Commission orders.

The Commission is working with the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy and other key stakeholders on possible amendments to address these issues.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Tuesday, February 26, 2019  
8:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 991, RELATING TO TELECOMMUNICATIONS**

Chair Baker and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department has serious concerns with this bill and its potential adverse impacts on consumers, as well as both the wholesale and retail telecommunications markets. Thus, the Department opposes this bill.

The purpose of this bill is to exempt public telecommunications utilities that provide basic exchange service to every county of the State from the regulatory jurisdiction of the Public Utilities Commission (Commission), including provisions governing financial reporting, rate regulation, issuance of securitized assets, disposal of property, and affiliate interests.

Since the passage of Act 180, Session Laws of Hawaii 2009, codified in Hawaii Revised Statutes (HRS) section 269-16.85, retail intrastate telecommunications have been deemed fully competitive in Hawaii, and much of the Commission's regulation of

retail telecommunication rates, fares, charges, and regulatory requirements have been lifted. Given the various retail alternatives available, the Department acknowledges fully competitive retail competition for telecommunications and supports a level playing field for all competitors.

If this measure passes as-is, however, the result goes much further than addressing concerns about a level playing field in the retail telecommunications market in Hawaii and could result in unintended and undesirable consequences. First, if passed, this measure would leave no regulatory oversight over areas such as wholesale competition, the carrier of last resort responsibilities that are required of incumbent local exchange carriers, and protection for consumers. To explain, while there may be fully competitive retail competition, the incumbent local exchange carriers in every state, including Hawaii, are responsible for providing significant infrastructure support to all telecommunications carriers. Pursuant to the Telecommunications Act of 1996 as well as existing Commission rules and orders, Hawaii's incumbent local exchange carriers are required to allow non-discriminatory and full access to that infrastructure at Federal Communications Commission (FCC) and/or Commission-regulated terms, conditions, and rates. If this measure passes, the Commission's and Department's ability to ensure this access will be eliminated or severely constrained because this bill proposes to eliminate all relevant sections of HRS chapter 269, as well as all rules and Commission orders related to the regulation of telecommunications services.

Second, while the FCC set forth a number of guidelines through the Telecommunications Act of 1996, it is through a number of Commission orders, such as those filed in Docket No. 7702, which investigated competition in Hawaii's telecommunications market, that established specific terms and conditions as well as prices through which competitive local exchange carriers are able to provide service to consumers. Without Commission oversight and the framework established through relevant Commission rules and orders, this could be a significant step backward in the fully competitive retail telecommunications market.

Third, through HRS chapter 269, the Hawaii Administrative Rules, and Commission orders, the Commission can ensure that a local incumbent local exchange carrier fulfills the responsibility of having a customer (such as customers in high-cost and/or rural areas as well as low-income and fixed-income customers) obtain affordable basic telecommunications services. While many residents can benefit from fully competitive retail competition, customers in rural areas who do not have mobile service coverage and/or customers who cannot afford mobile service are able to receive landline telecommunication services through Commission oversight. Along those lines, the Department is concerned that the carrier with carrier-of-last-resort responsibilities could raise its rates with no oversight to protect vulnerable customers. An even worse prospect is that a carrier of last resort under no regulatory oversight may decide not to provide service to vulnerable customers because it might not fit within the carrier's competitive strategy.

Fourth, if the proposed measure is passed, the State's ability to exercise oversight over transactions that might not be in Hawaii's best interest will be significantly reduced, if not eliminated. For example, the Commission can currently review a proposed merger or acquisition transaction to evaluate whether it is in the public interest. If this measure is passed, however, the Commission's ability to review this transaction is eliminated, and it would be impractical and unreasonable to expect that the newly merged or acquired company would agree to somehow annul or "unwind" the transaction after the transaction has already occurred. This type of oversight is important to ensure that mergers do not result in unreasonable concentration of market power in the State, which would be detrimental to consumers as well as other competitors. While the FCC and Department of Justice may look at such a transaction at a national level, the Commission is better positioned to understand the potential impact of those types of transactions at the local level.

Fifth, this bill has statutory inconsistencies that should not be allowed. Notably, section 1 proposes to exempt specified carriers from HRS chapter 269 (except HRS sections 269-7 and 269-16.9), whereas other sections propose modifications to other

sections in HRS chapter 269 that would essentially have no value because of the exemption in section 1.

The proposed measure raises several public interest concerns and should not be passed as-is. The Department has expressed these concerns to one of the incumbent local exchange carriers in the State and believes that the carrier acknowledges these concerns. The Department is working with other stakeholders to address the concerns but, if not modified, the Committee should not pass this measure.

Thank you for the opportunity to testify on this bill.

Written Statement of  
**Ani Menon**  
**Director of Government & Community Affairs**

**SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,  
AND HEALTH**

February 26, 2019 8:30 AM  
State Capitol, Conference Room 229

**IN SUPPORT OF:**

**S.B. NO. 991 RELATING TO TELECOMMUNICATIONS**

**To:** Chair Baker, Vice-Chair Chang, and Members of the Committee

**Re:** **Testimony in support of SB 991**

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to submit testimony in strong support of Senate Bill 991. The intent of this bill is to improve Hawaii's regulatory structure around voice services, eliminate competitive advantages among carriers, and promote fair competition in an open market.

After multiple working sessions with the Public Utilities Commission, the Consumer Advocate, and other stakeholders in the last few weeks, we are very close to coming to an agreement on proposed amendments to this bill that address the concerns expressed by key stakeholders. We ask for your support in moving this bill out of committee so that we may have the time to finalize and propose amendments that key stakeholders agree on.

Hawaiian Telcom was established over 135 years ago as an independent landline company providing voice and telegraph service. We have diversified our offerings to meet customer demand in an evolving and competitive market, and now provide an array of offerings including broadband, cable TV, data center solutions, security consulting, IT services, and more. While we add new services and solutions to meet the growing demands of our customer base, we continue to maintain our residential and business single line phone service – our basic local exchange service (BLES) - as the incumbent local exchange provider. This is a requirement we take seriously, and maintain an obligation to serve Hawaii under H.R.S. §269-16.9.

We are a locally-managed company whose ability to invest in our networks, retain our workforce and meet our customers' needs depends greatly on Hawaii's regulatory structure. Currently, 100% of Hawaiian Telcom's market is in Hawaii. Our employees live here, our customers live here, and our networks are physically located statewide. We continue maintaining our traditional legacy network while simultaneously investing in fiber optic facilities and upgrades to our IP-based network despite a declining residential and business voice consumer base.



Currently, Hawaiian Telcom serves a little over 120,000 residential landlines in Hawaii. By contrast, in 2008, we served 291,512 residential landlines. We have lost over 60% of our residential landline customers in the last decade, and those losses are expected to continue as consumers exercise their choice in a competitive market and migrate to services provided by cable companies, VoIP service providers, and wireless carriers.

Consumers are increasingly placing a higher value on cellular, internet, and video services – areas dominated by our competitors. Yet, unlike our competitors, we are faced with regulatory requirements that impact our operational decisions. Our largest competitor, a national wireline service provider with assets 50 times greater than the assets of Hawaiian Telcom and Cincinnati Bell combined, is not faced with similar regulatory requirements around their voice service. This puts us at a distinct competitive disadvantage.

The intent of SB 991 is to put Hawaiian Telcom on an even footing with other providers of voice service by updating the telecommunications regulatory framework that has not kept pace with the rapidly changing telecommunications marketplace. The language of SB 991 will modernize regulation over BLES. The proposed language of this bill will not impact our wholesale requirements or services governed by the Telecommunications Act of 1996, or any other federal law meant to provide oversight over the telecommunications industry.

Section 1 of this bill amends the existing regulatory framework under H.R.S. Chapter 269 to acknowledge that retail intrastate telecommunications services are fully competitive, consistent with the Legislature's 2009 classification of all retail intrastate telecommunications services as fully competitive. This section seeks to establish full regulatory parity in retail voice services to allow telecommunications providers to compete on a level playing field. Sections 2 through 7 aim to alleviate the burden of specific monopoly-era rules and regulations that limit our ability to compete in a competitive, growing market.

Senate Bill 991 also provides for a number of consumer safeguards:

- The Public Utilities Commission will retain its authority to investigate telecommunications providers under §269-7
- Telecommunications providers will continue carrying the “obligation to serve” – often referred to as the Carrier of Last Resort (COLR) – established by §269-16.9, ensuring that communities in Hawaii have access to BLES
- Consumers will continue to be able to file complaints
- Competitors will continue to have access to Hawaiian Telcom's facilities, including co-location in our central offices, use of poles and conduits, and discounts on retail services for resale

Hawaiian Telcom is committed to continuing to invest in Hawaii. We plan to expand our fiber footprint statewide by investing over \$20 million over the next four years. We were the only local service provider that submitted and won a competitive bid for the Connect America Funds (CAF) Phase II Auction held in the summer of 2018. We were awarded \$18.2 million to deploy high-speed internet to an additional 4,000 unserved rural locations statewide over the next six years. Our networks include over 11,000 miles of copper cable, and more than 4,562 miles of

fiber optic cable that will serve as the wireline backbone for future 5G networks and Hawaii's smart cities.

Updating the telecommunications regulatory framework will enable Hawaiian Telecom to compete on a level playing field and reduce the cost of regulatory compliance so that additional money can be reinvested in improving our state's telecommunications infrastructure and creating jobs. Improving and developing infrastructure will foster economic development opportunities and give our state a strategic advantage.

Senate Bill 991 is a positive and necessary step in encouraging fair competition in an open market place, and will eliminate existing competitive advantages among providers while keeping key consumer safeguards in place. We are committed to working with the Public Utilities Commission, Consumer Advocate, and other stakeholders to address their concerns, and are close to finalizing amendments that key stakeholders agree on.

We ask for your support in the passage of Senate Bill 991.



Charter Communications  
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH

Hawai'i State Capitol, Conference Room 229  
Tuesday, February 26, 2019  
9:00 AM

**Opposition to S.B. 991, Relating to Telecommunications**

Chair Baker, Vice-Chair Chang, and Members of the Committee.

Senate Bill 991 (S.B. 991), an unprecedented and sweeping deregulation bill, is completely lopsided because it is for the benefit of one company only, Hawaiian Telcom (HT), which has built its network with millions of dollars in government subsidies and is still receiving substantial universal service subsidies. These subsidies come with Carrier of Last Resort (COLR) and other obligations for vulnerable customers, which are part of the reason these subsidies were provided in the first place.

Additionally, of great consequence is S.B. 991 authorizes HT to unilaterally invalidate any PUC rule, decision or order, except those expressly required by federal law, when it says in section 1 that "all rules, regulations, decisions, orders, and other regulatory provisions...may be invalid beginning on the effective date of this Act *at the discretion of the public utility providing basic exchange service to every county in the State.*" This authority is dangerous because it would allow HT to pick and choose which PUC rule, decision or order should apply and which should be discarded. The role the PUC plays in these matters helps ensure reasonable, non-discriminatory

access to infrastructure in order to provide competitive service. We are concerned that this legislation could undermine these important PUC functions and thus consequently harm competition and consumers in the state.

In addition, the bill's deregulation is upside down, because it deregulates basic services without referring to any other retail services, including advanced services such as VoIP (Voice over Internet protocol). No bill should deregulate one set of services and leave more advanced services open to possible regulation.

Moreover, this bill does not meaningfully address protections that maintain a competitive environment for non-incumbent LEC and VoIP providers like Charter. Competition in the telecommunications market has led to unprecedented innovation and consumer benefits, and this bill as currently drafted could result in significantly reversing the benefits of competition.

Should the committee decide to move forward with this ill-advised bill (which it should not), such action must include simultaneously enacting in statute to confirm the permanent and unequivocal deregulation of VoIP services and ensure that if HT receives state or federal subsidies for USF expansion it should be precluded from those subsidies if services are deregulated as these funds were secured under the auspices of serving as a carrier of last resort.

For the forgoing, we respectfully request the Committee defer S.B. 991. Further assessment of far-reaching consequences is in order especially one that frees PUC from oversight.

Mahalo for the opportunity to testify.



**Testimony of Michael Bagley  
Director of Public Policy  
Verizon  
February 26th, 2019**

Senator Rosalyn H. Baker  
Chair  
Committee on Commerce, Consumer Protection, and Health  
Conference Room 229  
State Capitol, 415 South Beretania Street

Senator Stanley Chang  
Vice-Chair  
Committee on Commerce, Consumer Protection, and Health  
Conference Room 229  
State Capitol, 415 South Beretania Street

**Re: SB No. 991 -- Relating to Telecommunications  
Hearing Date: February 26<sup>th</sup>, 2019**

Dear Chair Baker, Vice-Chair Chang, and Members of the Committee on Commerce, Consumer Protection, and Health:

I am providing testimony on behalf of Verizon, regarding SB 991, legislation which seeks to modernize the state's statutory and regulatory framework, to reflect the reality of current circumstances and allow basic exchange service providers the opportunity to better serve and provide more benefits to their customers in Hawaii.

Streamlining and reducing regulations in an increasingly competitive environment in which telecom businesses operate, is a demonstration of good public policy that is in the public interest.

Specifically, SB 991 exempts a public utility providing basic exchange service to every county in the State or any affiliate or parent of such public utility from Chapter 269 and the jurisdiction of the PUC, and relieves such providers from the burden of certain reporting requirements. The bill also repeals language requiring approval of the PUC prior to a telecommunications carrier taking certain actions regarding rate changes related

to basic exchange service. The bill further exempts telecommunications carriers from utility rate regulation and ratemaking procedures and provisions relating to valuations, provides for more flexibility for effectively competitive services, cross-subsidies, and access to advanced services.

SB 991 has the potential to reduce costs for both the basic exchange service provider and consumer, and allows resources to be directed towards consumer-friendly investments such as equipment upgrades and enhanced services, rather than burdensome and unnecessary regulation that add costs and slow down delivery and quality of service, in an environment where businesses must move quickly on behalf of their customers to stay competitive.

We strongly urge the Committee to vote in favor of passage of SB 991.

Sincerely,

Michael Bagley  
Director of Public Policy, Verizon